

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

The United States of America, *ex rel.*
Joseph M. Thomas, Bringing this Action
on Behalf of the United States of
America,

Plaintiff,

v.

Duke University,
Duke University Health System, Inc.
William M. Foster, Ph.D., and
Erin N. Potts-Kant,

Defendants.

Civil Action No. 1:17-cv-276-CCE-JLW

RELATOR’S NOTICE OF DISPOSITIVE MOTION

Relator Joseph M. Thomas, pursuant to Local Civil Rule 56.1(a), files this notice of intent to file partial summary judgment motions. In connection thereto, Relator states as follows:

1. On April 27, 2018, the Court held a planning and status conference. Among the topics discussed were: (i) stipulations; and (ii) summary judgment motions that would not require expert testimony.

2. The Court’s April 27, 2018 Minute Entry states the Court’s expectation that “partial summary judgment motions not requiring consideration of expert testimony to be filed by early August, 2018.”

3. At the status conference, the Court stated that it would be acceptable if such motions “roll in,” as well as its hope that the parties would not need word extensions “given that we’re going to divide up the summary judgment issues.” (D.E. 169 at 61:20-62:3).

4. The Court also stated that before any motion for partial summary judgment was filed, the Parties should “fully explore[] stipulations” as an alternative. (D.E. 169 44:18-23).

5. Relator hereby gives notice that he intends to file a motion for partial summary judgment that Ms. Potts-Kant’s knowledge is imputed to Duke for FCA purposes, and that he intends to file this motion by August 7, 2018. Relator has conferred with Duke since the status conference, and at present (without having seen the motion), Duke intends to oppose the motion.¹

6. Relator further states that he has been exploring the possibility of stipulations with Defendants, including stipulations related to FCA falsity. These discussions are ongoing. If the Parties are unable to reach agreement on a falsity stipulation, Relator anticipates filing a motion for partial summary judgment on falsity by August 14, 2018.

¹ Relator has also conferred with counsel for Ms. Potts-Kant regarding this motion. Relator does not believe that this motion impacts Ms. Potts-Kant interests, but counsel for Ms. Potts-Kant reserves the right to challenge the motion.

7. To the extent Relator identifies further motions for partial summary judgment that do not require expert testimony, he will promptly provide notice to the Court and the parties.

8. Relator hopes that this process and timeline is consistent with the Court's expectations, but will make any modifications as necessary.

This the 2nd day of August, 2018.

Respectfully submitted,

JOSEPH M. THOMAS

/s/ Michael J. Finney

Matthew W. Broughton (admitted *pro hac vice*)

J. Scott Sexton (admitted *pro hac vice*)

Gregory J. Haley (admitted *pro hac vice*)

John R. Thomas, Jr. (admitted *pro hac vice*)

Michael J. Finney (admitted *pro hac vice*)

Daniel R. Sullivan (admitted *pro hac vice*)

Andrew M. Bowman (admitted *pro hac vice*)

GENTRY LOCKE

900 SunTrust Plaza

P.O. Box 40013

Roanoke, Virginia 24022-0013

(540) 983-9300

(540) 983-9400 (fax)

broughton@gentrylocke.com

sexton@gentrylocke.com

haley@gentrylocke.com

jthomas@gentrylocke.com

finney@gentrylocke.com

sullivan@gentrylocke.com

bowman@gentrylocke.com

/s/ D.J. O'Brien III

D.J. O'Brien III

N.C. State Bar No. 35481

Daniel F. E. Smith

N.C. State Bar No. 41601

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP
2000 Renaissance Plaza
230 North Elm Street
Greensboro, North Carolina, 27401
Tel. (336) 373-8850
Fax (336) 378-1001
dobrien@brookspierce.com
dsmith@brookspierce.com

Attorneys for Relator Joseph M. Thomas

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2018, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to counsel of record in this matter.

/s/ D.J. O'Brien III

D.J. O'Brien III